FILED
U.S. Bankruptcy Appellate Panel of the Tenth Circuit

August 26, 2004

Barbara A. Schermerhorn Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE RONALD L. DAVIS, Debtor.	BAP No. NO-04-029
RONALD L. DAVIS, Appellant, v. RIKKI D. DAVIS and SCOTT P. KIRTLEY, Trustee, Appellees.	Bankr. No. 03-06524-M Chapter 7 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court for the Northern District of Oklahoma

Before NUGENT, McNIFF, and THURMAN, Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Appellant Ronald L. Davis appeals from the bankruptcy court's

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Memorandum Opinion[1] and Judgment[2] denying his Motion to Avoid Lien.[3] Appellant sought to avoid the lien of his ex-wife in the parties' former marital residence pursuant to 11 U.S.C. § 522(f)(1)(A). Appellant contends the bankruptcy court incorrectly applied legal authority to the facts of his case by considering *Farrey v. Sanderfoot*[4] controlling precedent and not applying Oklahoma property law.[5] For the reasons stated herein, we agree with the bankruptcy court and AFFIRM.

I. Factual Background[6]

Appellant Ronald L. Davis and Appellee Rikki Davis established housekeeping in September 1987, and were married on February 28, 1991. On July 16, 1999, they separated and a divorce proceeding followed. The District Court of Tulsa County, Oklahoma ("State Court"), terminated their marriage on November 30, 2001, reserving support and property division issues for trial. A principal issue in the case was the division of the marital residence.

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1 Appellant's App. at 88-94.

2 Appellant's App. at 84.

3 Appellant refers to a "Motion for Relief from Stay" in his statement of jurisdiction, standard of review, and statement of the case sections of his brief. *See* Br. of Appellant at 1-2. This reference appears to be in error. Appellant apparently realizes partway through his brief that he is indeed appealing the bankruptcy court's judgment denying his Motion to Avoid Lien and thereafter refers to the lien avoidance. This Court will address the lien avoidance issue.

4 500 U.S. 291 (1991).

5 Appellant raises a third issue for consideration, stating: "The Bankruptcy Court erred by not recognizing the material effect that a factual analysis of marital property using law from Wisconsin, a community property state, and how such analysis would differ from a non-community property like Oklahoma." Br. of Appellant at 1. The Court considers this to be merely a restatement of his other issues, and will address the issues together.

6 The factual background has been taken generally from the "Court's Findings of Facts and Conclusions of Law" entered June 25, 2002, by the District Court of Tulsa County, Oklahoma, in Appellant's state court divorce case. *See* Appellant's App. at 74-80. The bankruptcy court adopted these factual findings as well. *See* Appellant's App. at 89.

Following trial, the State Court made extensive findings of fact and those that are pertinent to the lien avoidance issue before us follow. When they were first married, Rikki and Ronald lived in a house owned by Ronald and his father. Rikki helped maintain the residence. When the couple decided to sell this house, Rikki was active in planning its remodeling. She also helped pay for the remodeling using jointly acquired marital funds maintained in a joint account. Moreover, during the six years the couple occupied the house, their house payments were made from joint marital funds. In 1997, Rikki and Ronald sold the first house, depositing the proceeds into a joint construction account into which they also deposited jointly owned funds from an investment account. Using these funds, Rikki and Ronald built a new home, which became their marital residence. They resided in this second home until their separation in 1999.

Based on these facts and its application of Oklahoma case law, the State Court judge held that the residence was acquired with commingled marital funds accumulated by the joint effort of the parties. Therefore, it was joint property subject to equitable distribution of the court under Oklahoma law, notwithstanding that Ronald and his father had held record title to the first house as tenants in common.

In making an equitable division of the parties' joint property, the State Court awarded the marital residence to Ronald, subject to a lien in favor of Rikki to secure payment to her by Ronald of $98,938 as property settlement representing her share of the equity in the house. The State Court entered its Decree of Divorce and Journal Entry of Judgment on May 21, 2003, incorporating its previous Findings of Facts and Conclusions of Law.[7] The judgment is apparently on appeal to the Oklahoma Supreme Court, but there is

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[7] Appellant's App. at 68-73.

no record before this Court suggesting that the operation of the judgment has been stayed.

Ronald filed his Chapter 7 petition on November 3, 2003, and sought to avoid Rikki's lien on his homestead as a non-consensual judicial lien under 11 U.S.C. § 522(f)(1)(A). After an evidentiary hearing, in a well-reasoned opinion, the bankruptcy court denied the motion.[8] Applying the Supreme Court's decision in *Farrey v. Sanderfoot*, the bankruptcy court specifically found that Ronald took title to the marital residence subject to the lien, that the lien interest created by the State Court in the divorce action attached to the property prior to it being awarded to Ronald, and that he could not avoid the lien under § 522(f)(1)(A).[9]

II. Appellate Jurisdiction

An order denying a motion to avoid lien is a final order because it ends the litigation on the merits,[10] and Ronald's appeal is timely.[11] Neither party has elected to have the appeal heard by the United States District Court for the Northern District of Oklahoma.[12] We therefore have jurisdiction of this appeal.[13]

III. Standard of Review

"For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de*

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8 Appellant's App. at 88-93.

9 Appellant's App. at 91.

10 28 U.S.C. § 158(a)(1); *In re Thompson*, 240 B.R. 776, 779 (10th Cir. BAP 1999); 1 *Collier on Bankruptcy* ¶ 5.07[2] (Lawrence P. King ed., 15th ed. rev. 2004).

11 Fed. R. Bankr. P. 8002(a).

12 28 U.S.C. § 158(c)(1); Fed. R. Bankr. P. 8001; 10th Cir. BAP 8001-1.

13 28 U.S.C. § 158(a)(1) and (b)(1).

novo), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')."[14] Here, Ronald complains of the bankruptcy court's application of the law to the facts and therefore, we review the bankruptcy court's legal conclusions de novo. Much of Ronald's brief (as well as his presentation to the bankruptcy court) is devoted to attacking the State Court's findings of fact and its conclusion that the homestead was the marital residence of the parties. Neither the bankruptcy court nor this Panel need concern themselves with these pleas because, as federal courts, we are precluded from appellate review of a state court's decision.[15]

IV. Discussion

Although we determine that we are bound by the State Court's decision, a short analysis of its ruling is helpful in giving perspective to our decision. The State Court's determination that the homestead was the marital property of the parties is in accord with Oklahoma case law. The Oklahoma Supreme Court has held that when property is acquired during marriage as the result of joint effort, each spouse has a vested interest in that property, despite the fact that record title may appear otherwise, and the interest is similar to a common interest held in community property states.[16] In *Stevenson v. Stevenson*, the Oklahoma Court of Appeals held that property acquired by separate funds before marriage loses its character as separate property when used as the marital residence.[17]

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[14] *Pierce v. Underwood*, 487 U.S. 552, 558 (1988); *see also* Fed. R. Bankr. P. 8013.

[15] *See Abboud v. Abboud (In re Abboud)*, 237 B.R. 777, 780 (10th Cir. BAP 1999) (stating that the *Rooker-Feldman* doctrine bars consideration by a bankruptcy court of issues presented to and decided by a state court, citing as authority *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)).

[16] *See Collins v. Okla. Tax Comm'n*, 446 P.2d 290, 295 (Okla. 1968).

[17] 680 P.2d 642, 645 (Okla. App. 1984). *See also Thielenhaus v. Thielenhaus*, 890 P.2d 925, 930 (Okla. 1995) (holding that property acquired

(continued...)

Thus, while Oklahoma is not a "community property" state, its jurisprudence requires a domestic court to determine whether divorcing parties' property is part of their marital estate and, if it is, the domestic court shall divide the property using equitable principles.[18] An important weapon in the domestic court's arsenal is its power to award one spouse the marital residence while allowing the other a monetary award the payment of which is secured by a lien on the retained property. This equitable division of marital property results in a complete severance of common title.[19]

In 1991, the United States Supreme Court's holding in *Farrey v. Sanderfoot* resolved that domestic court-awarded liens on a spouse's homestead were not, in these circumstances, avoidable judicial liens under § 522(f)(1)(A).[20] Section 522 (f)(1)(A) provides, in pertinent part, that "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is - (A) a

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[17] (...continued)
during marriage by the joint industry of the husband and wife is subject to equitable division); *Umber v. Umber*, 591 P.2d 299, 302 (Okla. 1979) (holding that property acquired *before* marriage, when enhanced by joint efforts of husband and wife during marriage, loses its character as separate property and becomes subject to equitable division).

[18] Okla. Stat. Ann. tit. 43, § 121 (West 2001). In pertinent part, section 121 states that for property acquired during the marriage "the court shall . . . make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof."

[19] *See Collins*, 446 P.2d at 295 (citing *Kupka v. Kupka*, 124 P.2d 389 (Okla. 1942)).

[20] 500 U.S. 291 (1991).

judicial lien[.]"[21]

In *Farrey*, the Supreme Court faced a case very similar to that at bar. There, the Wisconsin divorce court had awarded the jointly owned marital residence to the husband (Sanderfoot) in fee simple interest and gave a lien on the residence to the wife (Farrey) to secure Sanderfoot's obligation to pay Farrey $29,208. Sanderfoot subsequently filed for bankruptcy and moved to avoid Farrey's lien under § 522(f)(1). Stating that the question presented was "whether § 522(f)(1) permits Sanderfoot to avoid the fixing of Farrey's lien on the property interest *that he obtained in the divorce decree*,"[22] the Supreme Court held that § 522(f)(1) "requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest."[23] Further, the Court held that the question of whether the debtor possessed an interest before the fixing of the lien was one of state law.[24] The Supreme Court went on to describe the effect of the state court divorce decree on the parties' previous joint interest in the marital home:

> [P]rior to the divorce judgment, [Farrey] and [Sanderfoot] held title to the real estate in joint tenancy, each possessing an undivided one-half interest. . . .
>
> . . . [T]he lien could not have fixed on Sanderfoot's pre-existing undivided half interest because the divorce decree extinguished it. Instead, the only interest that the lien encumbers is debtor's wholly new fee simple interest. The same decree that awarded Sanderfoot his fee simple interest simultaneously granted the lien to Farrey.[25]

Because the divorce decree created Sanderfoot's fee simple interest simultaneously with the lien, Sanderfoot did not possess his interest before the

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21 11 U.S.C. § 522(f)(1)(A).

22 *Id.* at 295-96 (emphasis added).

23 *Id.* at 301.

24 *Id.* at 299.

25 *Id.*

fixing of the lien and he could not avoid it under § 522(f)(1).[26]

That is exactly what happened here, and therefore, the rule in *Farrey* applies to prevent Ronald from avoiding Rikki's lien against the exempt homestead. That *Farrey* applied Wisconsin community property law to determine the parties' respective property interests and that Oklahoma is not a community property state in no way suggests error here. Indeed, controlling Oklahoma case law likens its rules of property division to those in community property states.[27] Ronald's purported distinction of *Farrey* on this basis fails. Moreover, his repeated contention that the marital residence was not jointly owned by him and Rikki at the time of the divorce is but a thinly-veiled collateral attack on a final state court judgment to which both the bankruptcy court and this Panel must accord full faith and credit.[28]

Once the State Court found the marital residence to be joint property, it was required by Oklahoma law to equitably divide it.[29] By its divorce decree and division of property, the State Court severed the joint ownership of the marital residence. Ronald was awarded sole interest in the marital residence, subject to a lien in favor of Rikki. Exactly as in *Farrey*, this judicial lien attached prior to Ronald obtaining fee simple interest in the residence and it is not avoidable under § 522(f)(1)(A).

V. Conclusion

The bankruptcy court's judgment denying the Appellant's Motion to

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[26] *Id.* at 300. The Supreme Court described Sanderfoot's interest "as if he had purchased an already encumbered estate from a third party." *See also In re Busch*, 294 B.R. 137, 144 (10th Cir. BAP 2003).

[27] *See Collins v. Okla. Tax Comm'n*, 446 P.2d at 295 ("The nature of the wife's interest is similar in conception to community property of community property states, and is regarded as held by a species of common ownership.").

[28] *See Abboud*, 237 B.R. at 780.

[29] *See* note 17, *supra*.

Avoid Lien is AFFIRMED.